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United States District Court
Eastern District of California

Tony D. Campbell,
Plaintiff, Case No. Civ. S 05-0070 DFL PAN P
vs. Order
K. Jones,
Defendant.

-oOo-

Plaintiff seeks leave to proceed in forma pauperis upon a
civil rights complaint against.

28 U.S.C. § 1915(g) provides that "[i]n no event shall a
prisoner bring a civil action or appeal a judgment in a civil
action or proceeding under this section if the prisoner has, on 3
or more prior occasions, while incarcerated or detained in any
facility, brought an action or appeal in a court of the United
States that was dismissed on the grounds that it is frivolous,
malicious, or fails to state a claim upon which relief may be

1 granted, unless the prisoner is under imminent danger of serious
2 physical injury."

3 The court's files and records show that plaintiff has
4 brought 43 civil actions and that at least three have been
5 dismissed for failure to state a claim: (1) Campbell v. Butts,
6 No. Civ. F 98-6483 AWI SMS (2) Campbell v. Randolph, No. Civ. F
7 99-5462 REC HGB; and (3) Campbell v. Baughman, No. Civ. S 05-0066
8 MCE DAD.

9 Section 1915(g) speaks in terms of barring a prisoner from
10 "bringing" a civil action when on three "prior occasions" an
11 action or appeal has been dismissed as frivolous, malicious or
12 for failure to state a claim. Section 1915(a)(1) requires
13 plaintiff seek an order authorizing "commencement" of a suit in
14 forma pauperis. "Bringing" and "commencing" suit are the same
15 thing. Black's Law Dictionary, Rev'd. 4th ed. (1968) p. 335 ("To
16 'bring' a suit is an equivalent term; an action is 'commenced'
17 when it is 'brought' and vice versa.") As the court has never
18 authorized plaintiff to "commence" this action, I find the three
19 dismissals identified above preceded bringing this action and it
20 is barred by section 1915(g) unless plaintiff shows he is under
21 imminent danger of serious physical injury. (I observe that any
22 other construction would reward the most litigious prisoner who
23 might successfully impose any number of malicious suits on a
24 district court the same day without paying any filing fee.)

25 Within 20 days, plaintiff may seek to show that the facts
26 alleged in his putative complaint place him "under imminent

1 danger of serious physical injury." Otherwise, I will recommend
2 the complaint be dismissed pursuant to section 1915(g).

3 So ordered.

4 Dated: November 17, 2005.

5 /s/ Peter A. Nowinski

6 PETER A. NOWINSKI

7 Magistrate Judge
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